

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

Review of Order No. 74-19 of the
California Regional Water Quality
Control Board, North Coast Region,
City of Arcata

Order No. WQ 74-6

BY THE BOARD:

On January 23, 1974, the California Regional Water Quality Control Board, North Coast Region (Regional Board) adopted Order No. 74-19 reprimanding the City of Arcata (City) concerning a raw sewage bypass to Humboldt Bay. Public hearings concerning the bypass were held by the Regional Board on January 16 and January 23, 1974.

On February 21, 1974, this Board on its own motion adopted Resolution No. 74-8 to review the failure of the Regional Board to seek civil monetary remedies against the City as provided in Water Code Section 13350(a)(2). The Regional Board found that waste discharge requirements were violated and that the discharge caused a condition of pollution and nuisance. We agree with these findings. The issue under review is whether the City intentionally or negligently discharged waste or caused or permitted waste to be deposited where it was discharged into waters of the State, and if so, whether the Attorney General should be requested to petition for civil monetary remedies. We have determined there was a negligent discharge and that matter should be referred to the Attorney General.

SUMMARY OF FACTS

The City of Arcata discharges waste to Humboldt Bay. Waste discharge requirements contained in Order No. 72-50 call for continuous treatment and disinfection prior to discharge. These requirements provide, in part, as follows:

"A. DISCHARGE SPECIFICATIONS

1. Waste discharged to the waters of Humboldt Bay shall not contain constituents in excess of the following limits:

<u>Constituents</u>	<u>Units</u>	<u>Median</u>	<u>90 Per- centile</u>	<u>Max *Daily MER lbs/day</u>	<u>Max *Monthly MER lbs/month</u>
Floating Particulates (dry weight)	mg/l	1.0	2.0		
Suspended Solids	mg/l	50.	75.	1625	32,500
Settleable Solids	ml/l	0.1	0.2		
Coliform Organisms	MPN/100 ml	23	230		

*MER - Mass Emission Rate

2. There shall be no bypass of untreated waste to the waters of Humboldt Bay at any time.
7. Neither the treatment nor the discharge of waste shall cause a pollution or a nuisance.
14. The discharge shall not cause chlorine residual concentrations in the effluent to exceed 0.2 mg/l.
16. The discharge shall not cause the degradation of marine communities, including vertebrate, invertebrate and plant species."

On November 30, 1973, a sewage transmission line adjacent to McDaniel Slough, a tributary of Humboldt Bay, failed, causing raw sewage to overflow and enter McDaniel Slough and Humboldt Bay. The discharge continued until December 8th when the emergency actions taken by the City were successful in abating the discharge. Approximately three million gallons of untreated waste were discharged during this period.

FINDINGS

1. Intentional Discharge. Our review of the hearing records satisfies us that the City did not intentionally discharge or cause or permit waste to be deposited where it would be discharged into waters of the State. Neither the Regional Board staff nor other witnesses presented evidence of intentional discharge. To the contrary, the staff stated that this was not an intentional discharge.

2. Negligent Discharge. Our review of the record indicates that, while no evidence was presented to show that the transmission line failure was caused by negligent conduct of City employees, considerable evidence was presented to show that the rate of the discharge and its duration was unreasonable and substantially contributed to by negligence of the City and its employees.

Negligence is either the omission of a person to do something which an ordinarily prudent person would have done under the circumstances, or doing something which an ordinarily prudent person would not have done under the circumstances (Fouch v. Warner, 99 Cal.App. 557, 564, 279 P. 183).

The record shows that the City lacked a preconceived emergency plan to be followed in the event of a major pipeline failure despite evidence that the City had experienced other

pipeline failures prior to the incident in question. The Regional Board staff testified that, in their judgment, lack of reasonably prompt abatement action resulted from the lack of an emergency plan and that reasonable sewage management demands that workable emergency plans be conceived to deal with such situations. The staff further testified that such planning is not uncommon in municipalities of comparable size to the City.

The overflow was first observed by City employees at about 11:00 a.m. on Friday, November 30. Nothing was done to abate or reduce the discharge on November 30th, and Mr. Conversano, the Director of Public Works for the City, decided that abatement activity should not begin until Monday, December 3rd. He directed the Assistant City Engineer to notify property owners of the necessity to effect repairs on December 3rd. Mr. Conversano testified that he did not realize the magnitude of the problem and believed that repairs could be effected rapidly on December 3rd. This judgment was made despite the knowledge that the flow of untreated sewage which would occur over the weekend was approximately .4 mgd. We find that this decision to delay abatement action to December 3rd was unreasonable and negligent under the circumstances.

The City's testimony indicates that attempts to dewater the transmission line on December 3,4,5, and 6 were largely unsuccessful. Mr. Conversano testified that on December 6th it became apparent that the blockage would take some time to correct. On December 7th, the City of Eureka's hydrocleaner was utilized and

on December 8th, the discharge was abated. The record indicates that numerous attempts were made to abate the discharge with inadequate equipment. We find that the delay in employing available and effective equipment to abate the discharge was unreasonable and negligent.

Considering all of the pertinent facts and circumstances, we find that the failures of the City to act and imprudent actions by the City of Arcata were unreasonable and negligent and that the City negligently discharged waste and caused and permitted waste to be deposited where it was discharged into waters of the State.

CONCLUSIONS

After review of the record, we conclude that the failure of the Regional Board to seek monetary remedies as provided in Water Code Section 13350 was not appropriate or proper.

NOW THEREFORE this Board requests the Attorney General to petition the Superior Court to impose, assess, and recover civil monetary remedies pursuant to Water Code Section 13350 and for such other relief as may be appropriate.

Dated: April 18, 1974

W. W. Adams
W. W. Adams, Chairman

Ronald B. Robie
Ronald B. Robie, Vice Chairman

ABSENT
Roy E. Dodson, Member

Mrs. Carl H. Auer
Mrs. Carl H. (Jean) Auer, Member

W. Don Maughan
W. Don Maughan, (Member)